

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WP(C).No. 27836 of 2007(L)

AGAINST THE ORDER IN EP.55/2007 IN
OS.213/2005 of MUNSIF COURT, PERUMBAVOOR

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PETITIONERS:

1. BHAVANI, W/O. CHINNASWAMY,
KRISHNA VILASAM HOUSE, NILAMEL MURI,
NILAMEL VILLAGE, KOTTARAKKARA.
2. LAXMI (MINOR), D/O. LATE INDIRA,
REPRESENTED BY THE FIRST PETITIONER AS THE
GUARDIAN.

BY ADV. SRI.P.N.GOPALAKRISHNAN NAIR
SRI.A.L.GEORGE

RESPONDENT:

HARIHARA SUBRAMANYA PILLAI,
S/O. SHANMUGHAN PILLAI, T.C.25/3173, VANCHIYOOR,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.RAMASWAMY PILLAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C) 27836/07

Appendix

Petitioners' Exts:

Ext.P1 true copy of the execution petition dated 6.8.2007./

Ext.P2 true copy of the notice dated 8.8.2007 issued by the execution court Kottarakkara Munsiff Court.

Ext.P3 true copy of the Medical Certificate dated 10.9.07 issued by Dr.C.K.Klaimanson of DCAN Ayurveda Sidha Thirumu Hospital.

Ext.P4 true copy of the photograph of the 1st petitioner.

M.N.Krishnan, J.
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W.P(C).No.27836 of 2007
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Dated this the 24th day of September, 2007.

JUDGMENT

This Writ Petition is filed seeking to stay the execution proceedings in O.S.No.213 of 2005 and for a direction not to evict the petitioners from the present place of dwelling house. The respondent also entered appearance and had handed over me a copy of the preliminary decree, final decree, etc.

2. The suit is one for partition. A preliminary decree was passed on the basis of a compromise whereby the plaintiff is allotted one out of two shares and thereafter a final decree application was filed whereby the Commissioner inspected the property and allotted ABEF in favour of the plaintiff and the final decree has been passed accordingly. It is to get delivery of ABEF the execution petition is filed.

3. A perusal of the plan also would reveal that it is not the entire residential house that is being allotted to the plaintiff, but it is divided into two and only that share is given. So, the allegation that the writ petitioner will be in the street does not appear to be correct and further the question of ailment also is not much appreciable in the light of the fact that he has

been moving around.

3. Therefore, there is nothing to interfere with the order directing delivery of the property. But as a matter of indulgence and to enable the parties if they want to settle the matter themselves I direct the court below to defer the delivery by six weeks from today and if no settlement is arrived at, then the court should fix a date for delivery after six weeks and the writ petitioner shall not cause any obstructions in giving delivery of the property.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 24/9